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and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1994

Addendum

ALGERIA*

[23 February 1996]

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* The initial report submitted by the Government of Algeria is contained in document CAT/C/9/Add.5; for its consideration by the Committee, see documents CAT/C/SR.79 and 80 and the Official Records of the General Assembly, Forty-sixth session, Supplement No. 44 (A/46/46), paras. 263-290.

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Introduction

1. Algeria ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Presidential Decree No. 89-66 of 16 May 1989, following approval by the National People's Assembly (Act No. 89-10 of 25 April 1989).

2. Algeria did not make any reservations at the time of approving and ratifying the Convention. It also recognized the powers vested in the Committee against Torture by articles 17 et seq. of the Convention.

3. At the sixth session of the Committee, Algeria submitted its initial report under article 19 of the Convention.

4. Under that same article, Algeria is also submitting its present periodic report, in two parts. Part I contains general information on all new measures taken by Algeria to implement the Convention and on any changes in legislation which affect implementation, from the date of submission of the initial report to the present. Part II contains supplementary information pursuant to the observations made by the Committee at the time of its consideration of the initial report of Algeria.

I. NEW MEASURES AND NEW DEVELOPMENTS RELEVANT TO THE CONVENTION

A. Measures taken to implement the Convention

5. Under section 2 of the Criminal Code, entitled "infringements of liberty", article 11 bis defines and punishes acts of torture. It stipulates that "any official or agent who carries out torture or orders it to be carried out in order to obtain a confession shall be punished by a prison term of six months to three years". This provision satisfies the provisions of articles 1, 2 and 4 of the Convention, as it punishes all State agents, whether security service officers or others, who intentionally inflict physical or mental suffering on a person in order to obtain a confession. The provision imposes the same penalty on any State official or agent who, while not himself committing the material act involving the infliction of torture, has ordered a third person to do so.

6. At the same time, article 12 of Executive Decree No. 92-276 of 6 July 1992, the Code of Medical Ethics, stipulates that "a doctor or dental surgeon who is asked or required to examine a detainee may not, whether directly or indirectly, even if only by being present, encourage or support an attack on the detainee's physical or mental integrity or dignity. If he finds that the detainee has been maltreated or brutalized he must so inform the judicial authority. A doctor or dental surgeon must never assist, participate in or allow acts of torture or any other form of cruel, inhuman or degrading treatment".

7. Furthermore, under article 32 of the Code of Criminal Procedure, "any established authority, public official or civil servant who, in the exercise of his functions, learns of a crime or offence, is required to inform the Department of Public Prosecution thereof without delay and to transmit to the Department any information, reports or documents relating thereto".

8. Article 72 of the Code stipulates that "any person who claims to have been injured by an offence may, by filing a complaint, bring a criminal indemnity action before the competent judge".

9. In conformity with article 4 of the Convention, Algeria is ensuring that "all acts of torture are offences under its criminal law".

B. Changes in Algerian legislation since the submission of the initial report, and new developments likely to affect the implementation of the Convention

10. For several years, Algeria has been undergoing profound changes, resulting in the promulgation of the Constitution of 23 February 1989. This text set up a general mechanism enshrining the principles for creating a truly constitutional, democratic and pluralistic State striving to consolidate individual and collective freedoms and safeguard human rights.

11. Based on the principles set forth in the Constitution, the judiciary, which is an independent branch, has endeavoured to ensure its practical independence at both the national and international levels.

12. At the international level, national legislation has been brought into line with international legal instruments on human rights.

13. At the national level, earlier legislation has been revised and outdated texts removed. The criminal penalty of transportation for life; the economic section of the Criminal Court; and preferential procedures for certain people awaiting trial have all been abolished. The Code of Criminal Procedure has been amended to consolidate the basic rights of the individual:

Police custody limited to 48 hours;

Communication allowed between the detainee and his family;

Searches subject to the consent of the head of household and a warrant from the magistrate;

Limited period of preventive detention;

Judicial supervision set up in place of preventive detention.

14. At the same time, a law on the status of the magistrature, which enshrines the principle of the independence of the judiciary, has been promulgated. In addition, a new organizational law on the legal profession has strengthened the profession's independent nature, and its role of working to ensure respect for citizens' freedoms and rights and strengthening and safeguarding the rights of defence. The functions of the notary and bailiff have also been grouped together as professions.

15. However, all of these legal provisions have been hindered by a new phenomenon, characterized by violent expressions of religious extremism and terrorism.

C. Proclamation of the state of emergency

16. The emergence and proliferation of grave breaches of public order and security of person and property led the Government, on 9 February 1992, to proclaim a state of emergency for a period of 12 months (Presidential Decree No. 92/44).

17. In conformity with the procedures laid down in the International Covenant on Civil and Political Rights, to which Algeria acceded in 1989, Algeria, through the Secretary-General, informed the other States parties that it was availing itself of the right of derogation from some of the Covenant's provisions.

18. Because of the persistent troubles due to terrorist activity, the state of emergency was extended on 6 February 1993 (Legislative Decree No. 93/02). Its purpose is to restore public order and better ensure security of person and property as well as the proper functioning of public services.

19. Under the presidential decree on the state of emergency, "the Minister of the Interior, in respect of all or part of the national territory, as well as the wali, in respect of his district, are empowered to issue decrees to maintain or restore public order, in keeping with government directives". The proclamation of the state of emergency gives the Minister of the Interior, for the entire national territory, or the wali, for his district, the following powers, in keeping with government directives:

To restrict or forbid the movement of persons and vehicles at specific times and places;

To control the movement and distribution of foodstuffs and essential goods;

To set up regulated residential zones for non-residents;

To deny residence to all adults whose actions prove harmful to public order and to the functioning of public services, or to place them under house arrest;

To requisition workers to carry out routine professional tasks, in cases of unauthorized or illegal strikes;

On an exceptional basis, to order searches, both during the day and at night.

20. The Minister of the Interior and the territorially competent wali are also empowered to order the temporary closure of all types of theatres and meeting halls and to forbid any gatherings that might disturb public order and peace.

21. By article 5 of the same decree, "the Minister of the Interior may order any adult whose actions prove dangerous for public order, public safety or the proper functioning of public services to be committed to a custody centre in a specified place". This measure, which the Government was obliged to apply, particularly during the months immediately following the proclamation of the state of emergency, was prompted by a concern to curb acts of violence which

jeopardize public order, individual security and social peace, threatening national stability in the process. The committal order is issued by the Minister of the Interior or an authority appointed by him.

22. Executive Decree No. 92/75 of 20 February 1992, which lays down the conditions for applying some of the provisions of the presidential decree on the state of emergency, defines committal to a custody centre as "an administrative measure of a preventive nature which consists of depriving all adults whose behaviour might endanger public order and safety, as well as the proper functioning of public services, of their freedom of movement by committing them to one of the centres created by decree of the Minister of the Interior".

23. The same decree stipulates that the committal order may be the subject of an appeal to the wali of the detainee's place of residence. Any appeals, investigated and accompanied by any relevant observations, are submitted to the "Regional Appeals Council", which issues its decisions 15 days following the referral. The decree establishes six such councils, spread throughout the national territory.

24. The detainees receive assistance and medical care under conditions determined by the internal regulations applicable to the custody centre. Of the approximately 10,000 persons taken in for questioning between February and April 1992, a large number were released a few days after consideration of their cases. The others were committed to custody centres in conformity with the above-mentioned decrees. Starting in May 1992, the detainees were gradually released and the custody centres closed.

25. It should be pointed out that the exceptional measures taken during the state of emergency were all accompanied by guarantees of protection of human rights. No restrictions were placed on the rights and freedoms enshrined in articles 6, 7, 8, 11, 15, 16 and 18 of the International Covenant on Civil and Political Rights.

26. The measures for maintaining or restoring order which the Minister of the Interior or the wali is empowered to take must be implemented "in keeping with government directives", particularly with regard to the observance of human rights and fundamental freedoms.

1. Law on terrorism and subversion

27. In order to be equipped with legal instruments enabling it to confront terrorist crime through the judiciary, Algeria enacted a law on terrorism. Legislative Decree No. 92-03 of 30 September 1992, on action to combat terrorism and subversion, creates specialized bodies, called "special courts", to try cases of terrorism.

28. These special courts are not courts of special jurisdiction and are special only with regard to the nature of the offences which they are responsible for trying. This assertion is supported by the fact that:

> The special courts are composed exclusively of professional magistrates of the ordinary-law judiciary, who by regulation are subject to the law on the status of the magistrature;

The rules of the Code of Criminal Procedure apply to the types of cases that can be tried by the special courts, except for some minor adjustments which have no effect whatsoever on the rights of the defence;

Hearings are public and are open to the national and international press;

The rights of the defence are scrupulously observed, and detainees who for financial reasons cannot avail themselves of the services of a lawyer may have one appointed for them by the President of the Bar;

The remedies allowed in ordinary cases are available to the accused in special courts at all stages of the proceedings, with no restrictions whatsoever (appeal against the decisions of examining magistrates, objection and application for judicial review in respect of judgements).

29. Lastly, in conformity with the Constitution and the law, anyone sentenced to death may receive a presidential pardon. It should be noted that several persons sentenced to death by the special courts have in fact been pardoned, and in any event no death sentence has been carried out since September 1993.

2. Abrogation of the provisions on terrorism and subversion and elimination of the special courts

30. In an attempt to standardize its judicial system, Algeria abrogated Legislative Decree No. 92-03, thereby eliminating the special courts. The phenomenon of subversion and terrorism has been restored to its normal context of pure and simple delinquency and is dealt with at the judicial level by the ordinary courts.

31. Ordinance No. 95-11 of 25 February 1995, which amends and supplements Ordinance No. 66-156 of 8 June 1996, on the Criminal Code, created a new category of criminal acts, "terrorist and subversive crimes", the judicial procedure for which is handled by the criminal courts. Any act directed against State security, territorial integrity or the stability and normal functioning of institutions is defined as a "terrorist and subversive act" (art. 87 bis of the amended Code) if it has one of the following aims:

To sow terror among the population and create a climate of insecurity by morally or physically attacking persons, endangering their life, freedom or safety or damaging their property;

To hinder traffic or freedom of movement on the roads and fill public places with crowds;

To commit an outrage against the symbols of the nation and the Republic and desecrate tombs;

To attack means of communications and transportation, as well as public and private property, through illegal seizure or occupation;

To harm the environment or introduce into the atmosphere, earth, subsoil or waters, including the territorial sea, any substance which might endanger the health of mankind or animals or the natural environment;

To hinder the action of the public authorities or the free functioning of establishments providing a public service;

To hinder the functioning of public institutions or attack the life or property of their agents, or impede the implementation of laws and regulations.

D. Ordinance No. 95-12 of 25 February 1995 on clemency measures

32. In an attempt to encourage the restoration of civil peace, the Algerian State has decided on clemency measures aimed at creating an opportunity for persons who have strayed into criminal activities and wish to become law-abiding once again. A clemency law was adopted, aimed at repentant terrorists, calling for a series of measures ranging from exemption from prosecution to the substantial reduction of sentences and punishments.

33. The clemency measures call, among other things, for the following:

Any person who has belonged to one of the organizations covered by article 87 bis (3) of the Criminal Code and who has not committed one of the offences covered by that article, leading to loss of human life, permanent disability, breach of the moral or physical integrity of citizens or destruction of public property, shall not be prosecuted (art. 2);

Any person who has been in possession of arms, explosives or other weapons and who voluntarily turns them over to the authorities shall not be prosecuted (art. 3);

If the persons covered by article 1 have committed crimes entailing loss of human life or permanent disability, the sentence shall be 15 to 20 years' imprisonment, when the legal penalty is the death sentence, and 10 to 15 years' imprisonment, when the penalty is life imprisonment. In all cases, the sentence shall be reduced by half;

The persons covered by articles 4, 8, 9, 10 and 11 of the Ordinance shall be taken immediately to the competent court and brought before the Government Procurator (art. 7). The latter must immediately prepare a report establishing the facts and initiate public proceedings. The persons concerned may, if they so request, undergo a medical examination.

E. Creation of the National Human Rights Observatory

34. With the adoption of the 1989 Constitution and Algeria's accession to the international legal instruments on human rights, the post of Minister for Human Rights was created in June 1991. However, given the difficulty in reconciling the defence of human rights with government responsibility, Algeria, like other countries, decided to set up a National Human Rights Observatory (established by Presidential Decree No. 92-77, which was signed on 22 February 1992).

35. An independent institution attached to the Office of the President of the Republic, with administrative and financial autonomy, the Observatory is

a human rights monitoring and evaluation body. It plays an advisory role in fields relating to human rights, and its principal activities are the following:

Promotion of human rights in Algeria, in conformity with the principles embodied in the Universal Declaration of Human Rights;

Monitoring and assessment of the implementation of the human rights provisions of the international conventions ratified by Algeria and the provisions of the Constitution, laws and regulations;

Adoption of measures when human rights violations are reported or brought to its attention;

Preparation of an annual report on the situation of human rights.

36. The Observatory is involved in raising awareness and popularizing the human rights principles contained in national legislation and the international legal instruments on human rights, publishing a quarterly human rights review, a press review and an internal information bulletin on its activities.

37. In order to be closer to the people and to streamline its work of protecting and promoting human rights, the Observatory is attempting to strengthen its activities in the field by opening decentralized offices nationwide.

38. As an example of Algeria's commitment to promoting human rights, the President recently instructed the various State bodies to give their full assistance to the Observatory in its mission of monitoring respect for human rights.

II. SUPPLEMENTARY INFORMATION PURSUANT TO THE OBSERVATIONS MADE BY THE COMMITTEE AT THE TIME OF SUBMISSION OF THE INITIAL REPORT

Manslaughter

39. Manslaughter may never be liable to the death sentence or indeed a criminal penalty. Under article 288 of the Criminal Code, "Anyone who, whether through maladroitness, imprudence, inattentiveness or failure to observe regulations, involuntarily commits or is the cause of a homicide shall be punished by a prison term of six months to three years and a fine of 1,000 dinars". The perpetrator of manslaughter may therefore be tried by the criminal courts and be liable to a correctional penalty.

Judicial error

40. Judicial error is covered by Algerian legislation within the framework of an application for a trial review. Article 531 provides that applications for review may be lodged only against judgements and decisions having the force of res judicata, by jurisdictions that have pronounced criminal or correctional penalties. It states that, in matters of review, it is the Supreme Court which is competent.

41. Article 531 bis holds that any Supreme Court decision by which a convicted person is found innocent grants that person or his rightful claimants damages by way of compensation for the moral and material injury caused to him by the conviction. The application for redress formulated by the convicted person or his rightful claimants may be submitted at any stage of the proceedings. Article 531 bis goes on to state that damages awarded to the victim of the judicial error or his rightful claimants, the cost of filing and publishing the judicial decision, and the court costs are to be paid by the State.

42. If the person applying for review so requires, the decision by which the convicted person is declared innocent is posted in the jurisdiction of the court which handed down the conviction, in that of the domicile of the person applying for review, and in that of the last domicile of the victim of the judicial error, if that person is deceased. Under the same conditions, this decision is published through the press, in three newspapers to be chosen by the court which pronounced the review decision.

Cruel, inhuman or degrading treatment

43. Capital punishment is not considered in Algeria to be cruel and inhuman treatment. It should, however, be stressed that its application respects the safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the Economic and Social Council in its resolution 1984/50. Thus:

The death penalty, like all other criminal penalties, may not be pronounced by Algerian courts except for the most serious intentional crimes with lethal or other extremely grave consequences;

Like all other criminal penalties, the death penalty may be imposed only for a crime for which the death penalty was prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

The principle of non-retroactivity is enshrined both in the Constitution and in article 2 of the Criminal Code, which states that "criminal law shall not have retroactive effect, save where it prescribes a lighter penalty";

The death penalty may not be pronounced against persons below 18 years of age (who are exempted by their minority status under art. 50 of the Criminal Code);

The death penalty may not be carried out on pregnant women or on women breast-feeding a child of under 24 months, nor against a convicted person who is seriously ill or who has become insane (art. 197, para. 2, of the Prison Reform and Rehabilitation Code);

The death penalty may only be carried out pursuant to a final judgement having the force of res judicata, after remedies with the Appeals Court and the Head of State have been exhausted. Article 499 of the Code of

Criminal Procedure provides that, pending the expiry of the deadline for application for judicial review and, if an appeal is lodged, until the Supreme Court decision is pronounced, there shall be a stay of execution against the decision, except with regard to civil sentences;

Anyone sentenced to death, regardless of his crime, has the right to apply for pardon, or commutation of sentence;

Where capital punishment is applied, it shall be carried out so as to inflict the minimum physical suffering.

Extradition

44. Independently of Algeria's accession to the legal conventions governing extradition and its implementation, the law, including Title I of the Code of Criminal Procedure, on extradition, defines its legal framework, conditions (art. 697) and cases where it is denied. Article 698 of the Code enumerates some cases where extradition is not granted:

When the subject of the extradition request is of Algerian nationality, and this status already existed at the time of the offence for which the extradition is requested;

When the crimes or offences have been committed on Algerian territory;

When the crimes or offences, even if committed outside Algerian territory, have been prosecuted and a final decision rendered;

When, according to the laws of the requesting State or of the State of which the request is made, the prescription of the action was completed prior to the extradition request, or the prescription of the penalty was completed prior to the arrest of the individual whose extradition is requested and, generally, once the public proceedings of the requesting State have concluded;

If there has been an amnesty in either the requesting State, or the State of which the request is made, as long as, in the latter case, the offence is one which can be prosecuted in that State when committed outside its territory by an alien.

45. It should be noted that, as soon as the extradition request reaches the Algerian Government and the documents in the case file have been examined, the subject of the extradition request is immediately arrested and held in the Algiers penitentiary (art. 702 of the Code of Criminal Procedure). The Criminal Division of the Supreme Court is immediately seized with reports and all other documents. The alien appears before the Court within not more than eight days after the papers have been served. If the Supreme Court hands down an opinion to deny the request for extradition, that decision is final and extradition may not be granted (art. 710 of the Code of Criminal Procedure).

46. An individual who has been provisionally arrested under the conditions stipulated by article 705 may be released if, within 45 days of his arrest, the Algerian Government has not received one of the documents mentioned in article 702 (art. 713 of the Code of Criminal Procedure).

Status of the magistrature

47. Ordinance No. 27-69 b of 31 May 1969 on the status of the magistrature considered the magistrature to be "a specialized function of the revolutionary power", its main role being to protect and defend the revolution, which called for a political commitment by the magistrature and the magistrates. The High Council of the Judiciary was composed of magistrates elected by their peers but also of representatives from the political world and the legislature (National People's Assembly).

48. The Constitution of 23 February 1989 recognized the principle of the independence of the judiciary based on the strict separation of powers. On that basis, a new law on the status of the magistrature was promulgated on 12 December 1989 and complemented by a legislative decree of 24 October 1992. These texts define a new mandate for magistrates, ensure their impartiality and protect them against all forms of pressure. They recognize the irremovability of magistrates and separate the function from the rank so that the magistrates' career can develop without their posts being endangered.

49. The members of the High Council of the Judiciary representing the political and legislative authorities have been removed and the Council has become the only body to deal with the magistrate's career. It is now composed of eight magistrates (the Senior President of the Supreme Court, the Chief Prosecutor of the Supreme Court and six magistrates elected by their peers), four members appointed by the Head of State, and three members representing the Ministry of Justice. It is chaired by the Head of State, and the Minister of Justice is Vice-President.

The prison population in Algeria

50. From independence in 1962 to the present, the prison population has never exceeded 28,000, including all categories and nationalities. The capacity of the 115 penitentiary establishments is about 25,000, a figure which has been arrived at in accordance with criteria and procedures in effect at the international level.

51. The penitentiary system in Algeria permits the use of prison labour on outside work sites. Some 2,000 detainees have been assigned to agricultural farms as part of the prison workforce employment programme called for by the Prison Reform and Rehabilitation Code, which is based on the set of minimum rules adopted by the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders, as well as subsequent United Nations guidelines, standards and recommendations.

The Constitutional Council

52. The Constitutional Council (arts. 153-159 of the Constitution) consists of seven members, two of whom are appointed by the President of the Republic, two elected by the National People's Assembly and two elected from within the Supreme Court.

53. The President of the Republic designates the President of the Constitutional Council for a single six-year term.

Primacy of international conventions over domestic law

54. Under the Constitution, international conventions ratified by Algeria have a higher legal status than domestic law. This naturally means that all provisions of international conventions are taken into account by national legislation in force.

55. By its Decision No. 1 of 20 August 1989, the Constitutional Council considered in that regard that "after it is ratified and once it is published, any international convention becomes a part of national law and, pursuant to article 123 of the Constitution, acquires higher authority than that of the laws, authorizing any Algerian citizen to invoke it before the courts".

Proclamation of a state of emergency

56. Article 86 of the Constitution states that, in case of compelling necessity, the President of the Republic, after consulting the Head of Government and the President of the Constitutional Council, may declare a state of emergency.

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
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Second periodic reports of States parties due in 1994

Addendum

POLAND*

[7 May 1996]

* The initial report submitted by the Government of Poland is contained in document CAT/C/9/Add.13; for its consideration by the Committee, see documents CAT/C/SR.160, 161 and 161/Add.1 and the Official Records of the General Assembly, Forty-ninth session, Supplement No. 44 (A/49/44), paras. 66-73.

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Introduction

1. This second periodic report on the implementation by Poland of the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment covers the period since the submission of Poland's initial report and takes into consideration the conclusions reached by the Committee against Torture on 11 November 1993, at its eleventh session. This period is characterized by continued changes in legislation made to create and strengthen legal guarantees to ensure respect for the civil and political rights that are the essential components of a State subject to the rule of law.

2. During this period, Poland ratified the European Convention on Human Rights and established contacts with international non-governmental organizations (NGOs) such as Amnesty International, the Helsinki Federation of Human Rights and Interpol. The implementation of the provisions of the Convention has become an enduring and very important factor in the process of transforming the legal system and the way in which it is applied. Below is an analysis of this process.

3. A report on respect for the fundamental rights of the inmates of reformatories and children's shelters, prepared in March 1994 by the Office of the Ombudsman and covering 1993 and early 1994, indicates that cases of illegal use of physical force against minors occurred during that period. For the preparation of the study, 288 inmates in 14 rehabilitation establishments, or 17.7 per cent of all reformatory inmates, were questioned. The inmates' descriptions suggest the need to divide cases of violation of physical integrity into two categories: striking once (striking) and striking repeatedly (beating). The distinction made is useful for describing the injuries sustained by the inmates as well as the degree of the perpetrators' guilt.

4. The table below contains general data on cases of physical abuse of reformatory inmates:

Violation of inmates' physical integrity

No.	Location of establishment	Number of cases		Number of inmates		Per cent of inmates struck or beaten among inmates questioned
		Struck	Beaten	Questioned	Struck or beaten	
1.	Bialystok	7	2	28	9	32.1
2.	Dominów	-	-	30	-	-
3.	Glogów	3	-	15	3	20.0
4.	Grodzisk Wlkp.	2	-	14	2	14.0
5.	Jerzmanice Zdrój	-	5	17	2	12.0
6.	Ostrowiec Św.	-	-	14	-	-
7.	Poznań	-	4	19	3	15.6
8.	Sadowice	3	2	27	5	18.5
9.	Stawiszyn	4	2	16	6	38.0
10.	Studzieniec	1	-	31	1	3.2
11.	Świdnica	10	3	25	9	36.0
12.	Trzemeszno	2	-	14	2	14.0
13.	W-wa Falenica	-	-	12	-	-
14.	W-wa Okęcie	2	-	26	2	8.0
	Total	34	18	288	42	14.6

5. In no case of violation of a child's physical integrity figuring in the table was the minor left with serious bodily injuries. The injuries generally consisted of bruises and scratches. There was one exception, which occurred in the Świdnica reformatory on 1 January 1994. One of the instructors slapped a child over the face for disobeying. The minor lost his balance and hit his face against the wall, breaking his nose.

6. All cases of violation of the physical integrity of children in reformatories have been examined by the Juvenile Institutions Service in the Ministry of Justice. The review also focused on the justification and appropriateness of the preparatory and disciplinary investigation proceedings undertaken by the institutions' directors.

7. The analysis showed that the teaching corps and staff were subjected to the following penalties:

Disciplinary proceedings were instituted against five employees, culminating in their dismissal, pursuant to article 52 of the Labour Code;

Proceedings were instituted with the public prosecutor (broken nose); case pending;

Preparatory investigation proceedings were instituted in seven cases to determine the names of those responsible for beatings;

Two teachers received warnings for using inappropriate educational methods.

8. No cases of torture of detainees by prison staff were reported in 1993. During that period, one prison officer received a disciplinary sanction, namely assignment to a lower grade for a disciplinary offence qualified as "unlawful behaviour towards detainees".

9. In addition to the information contained in the preceding report, the Court of Appeals in Gdansk convicted 10 former prison officers of unlawful behaviour towards detainees following the suppression of the 1989 uprising. Penalties ranged from 8 to 18 months of deprivation of freedom, with a two-year conditional deferral of sentence. All those convicted were banned from working for the prison service for one year. However, none of them has returned to the prison service.

Article 2

10. The legislative, administrative and judicial machinery in place effectively prevent torture throughout the country. The Police Act of 4 April 1990 and the State Security Office Act of 6 April 1990 lay down specific rules for the disciplinary and criminal responsibility of officials of these institutions. The revision of the criminal legislation under way introduces many new arrangements for further guaranteeing the implementation of the provisions of the Convention.

11. The draft new Penal Code makes no provision for the death penalty, based on the principle that the death penalty is incompatible with human dignity, the contemporary system of values and Additional Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

12. The penalty of life imprisonment, which can satisfy society's desire for justice in respect of the most serious crimes, can effectively protect the public against the worst offences. To a certain extent, such protection can also be afforded through the penalty of 25 years' deprivation of freedom.

13. It should be emphasized that although the death penalty does exist, it has not actually been applied in recent years.

14. During the period 1989-1993, the Polish courts did not pronounce a single death sentence in final judgement. In the first half of 1994, one person was sentenced to death for an extremely cruel murder, but that decision is not yet final.

15. The draft new Penal Code also provides for the liberalization of penalties and the limitation of the legal minimum period for applying a penalty of deprivation of freedom or prevention measures.

16. The draft Code of Criminal Procedure provides for an important change in preparatory proceedings, introducing participation by a court at this stage of the trial, extension of the scope of personal participation by the public prosecutor in the proceedings and expansion of the public prosecutor's scope of supervision over the acts of other bodies involved in the proceedings.

17. The draft also reinforces the rights and guarantees of the parties to the preparatory proceedings, in particular by placing the defendant and the victim on an equal footing at this stage.

18. One result of this approach is the right granted to the parties to file a complaint against a decision denying them or their representatives participation in the proceedings and not allowing the accused to ask to be questioned in the presence of his counsel.

19. In accordance with the principle of separation of the prosecutorial and judgemental functions, the draft has not taken the approach that the investigation shall be conducted directly by the examining magistrate, but provides for participation by the court in the preparatory proceedings if the parties' procedural safeguards so require. These involve, in particular, decisions on complaints and certain other acts by the bodies conducting preparatory proceedings defined by law. In addition to measures for the resolution of complaints, the court is competent to take decisions on: ordering or extension of pre-trial detention, confiscation of an object or recovery of a sum of money placed as security, ordering of monitoring and recording of telephone conversations and confirmation of exceptional decisions by the public prosecutor in that connection, placing of an accused person under psychiatric observation in a medical establishment or extension of such observation, and granting or withdrawal of safe conducts.

20. The court's new role in preparatory proceedings is also reflected in the provisions of the draft that allow for the possibility of questioning before the court at this stage of the proceedings. One of the parties or a procedural body may ask for a witness to be heard before the court in the event that it might not be possible to hear the witness otherwise, and the public prosecutor may also request that an accused person should be questioned in this way.

21. An accused person may also ask to be questioned before the court in the framework of preparatory proceedings.

22. The court's control over the preparatory proceedings, important to ensure that procedural guarantees are observed, is explicitly provided by the right granted to the injured person to lodge a complaint with the court against a refusal to open an inquiry or investigation or the examining magistrate who filed an indictment in respect of the offence, and the right granted to the parties to lodge a complaint against a decision to dismiss preparatory proceedings.

23. If the court annuls a decision to dismiss or a refusal to open proceedings, it may take a decision - binding on the public prosecutor - as to which circumstances shall be examined or action taken. If the public prosecutor still finds no basis for filing an indictment, he shall again order the proceedings dismissed or refuse to open an inquiry or investigation. This decision can no longer be challenged, and the injured person is free to take the initiative of filing an indictment with the court as a subsidiary prosecutor.

Article 3

24. The procedure described in Poland's initial report for considering applications for the extradition of a person sought by a foreign State for the purpose of instituting criminal proceedings against him or of making him serve the penalty imposed demonstrates that the existing provisions of the Code of Criminal Procedure fully guarantee compliance with the provision contained in article 3 of the Convention. Proof of this is the fact that the opinion on the application made by the foreign State is issued by an independent higher court, namely the voivodeship court, which takes into account the explanations provided by the person whose extradition is sought. The draft Code of Criminal Procedure in preparation provides that the defence counsel is entitled to participate in the hearing at which the voivodeship court hands down its decision on the foreign country's application. It also provides that, in the event of a decision to refuse extradition, the extradition cannot be carried out.

25. A complaint may be filed in respect of a court decision involving extradition. The court transmits its final decision and the case file to the Minister of Justice, who notifies the competent organ of the foreign country.

Article 4

26. The draft Penal Code provides for the obligation set forth in the Convention to establish penalties for acts of violence or unlawful threats and

physical or mental ill-treatment. Draft article 248 provides that anyone who uses violence or unlawful threats for the purpose of influencing a witness, expert, translator or defendant, or, consequently violates that person's physical integrity, shall be liable to a penalty of deprivation of freedom of three months to five years.

27. According to draft article 249, any public servant who uses violence, unlawful threats or any other type of physical or mental ill-treatment directed against another person for the purpose of obtaining depositions, explanations or statements, shall be liable to a penalty of deprivation of freedom of six months to eight years. The scope of this article is even broader than that of the Convention's recommendations.

28. A person deprived of his freedom is also protected against torture, pursuant to the obligation laid down in the Convention. Article 250, paragraph 1, of the draft provides for a penalty of deprivation of freedom of three months to five years for anyone who physically or mentally abuses a person lawfully deprived of his freedom. This provision relates to both public servants and fellow detainees. Article 250, paragraph 2, lays down the same penalty against a public servant for tolerating the ill-treatment of a person deprived of his freedom who is subject to the public servants' supervision.

29. From a comparison of the penalties laid down for these acts with the penalties stipulated for similar offences in the draft Penal Code, it can be concluded that they are adequate and that they give primary consideration to the serious nature of the acts in question.

Article 5

30. The Penal Code in force complies with the rule contained in this provision of the Convention, as it establishes the territorial principle in the recognition of the jurisdiction of Polish criminal law.

31. Article 3 of the Penal Code provides that Polish criminal law applies to the perpetrators of offences committed in the territory of Poland and on Polish ships at sea or on Polish aircraft. Polish criminal law also applies to Polish citizens who have committed an offence abroad and to foreigners who have committed an offence abroad, responsibility for which depends upon the recognition of such an act as an offence by the law in force in the territory where the act was committed. Apart from the provisions in force in the territory where the offence was committed, Polish criminal law applies to foreigners who have committed offences in respect of which criminal proceedings are instituted pursuant to international agreements.

32. The draft new Penal Code takes as its guiding principle that Polish criminal law shall apply to both Polish citizens and foreigners who have committed an offence abroad. However, foreigners' responsibility is only engaged if they have committed an offence against the interests of the Polish State, a Polish citizen, a Polish legal entity or a Polish administrative division, or have committed another offence carrying a penalty of over two years' deprivation of freedom, provided that the perpetrator is in Polish territory and that no decision to extradite him to the judicial authorities of

the place where the offence was committed has been handed down. For criminals are increasingly being extradited to their countries of origin pursuant to the rules of extradition. According to the draft, the general requirement for responsibility is the binding force of the prohibition in the place where the act was committed. The court may consider existing differences between the law in the place where the act was committed and Polish law, to the perpetrator's benefit. This requirement does not apply to Polish public servants who have committed an offence in the performance of their duties or to persons who have committed an offence in a territory that is not subject to a government authority. Regardless of the provisions in force in the place where the offence was committed, Polish criminal law shall apply to a Polish citizen or a foreigner who has committed:

(i) An offence against the internal or external security of the Polish State;

(ii) An offence against the Polish administration or public servants;

(iii) An offence against vital Polish economic interests;

(iv) An offence consisting of false depositions before an organ of the Polish Government.

33. The draft also provides that, regardless of the provisions in force in the place where the offence was committed, Polish criminal law shall apply to Polish citizens and foreigners who are not the subject of extradition procedures, if they have committed abroad an offence which the Polish State is bound to prosecute pursuant to international agreements.

Article 6

34. The rules governing the initiation of criminal proceedings, the arrest of persons charged with an offence and the ordering of pre-trial detention are discussed in the initial report. The provisions of the Code of Criminal Procedure currently in force govern these aspects in conformity with article 6 of the Convention. These involve both the justification for instituting preventive measures and the powers of the bodies ordering them, verification of the grounds for instituting them and the rights of the arrested person immediately to contact the nearest competent representative of the country of which he is a citizen and lodge an appeal against the decisions of the bodies ordering these measures.

35. The draft new Code of Criminal Procedure also provides for amendments to the provisions governing measures of constraint which considerably limit the frequency with which they are ordered in criminal proceedings, in particular arrest and pre-trial detention. The draft pays special attention to the provisions governing preventive measures, including pre-trial detention. The list of such measures was expanded to include:

(a) Suspension of the accused from his duties or from the exercise of his profession or the order to refrain from a particular activity or from

driving particular vehicles, if this is necessary to prevent him from impeding criminal proceedings, for example by removing criminal evidence or committing a repeat offence;

(b) Giving notification to the accused that he is prohibited from leaving the country, perhaps together with the seizure of his passport or another travel document or prohibition of the issue of such a document.

35. The number of preventive measures in the draft has been expanded in order to eliminate the need for pre-trial detention, which has been replaced by other, less severe, measures of constraint. The basic change has been to give the court exclusive competence to order pre-trial detention, removing it from the competence of the public prosecutor. This amendment should further the rights of the individual in criminal proceedings, since it is essential for deprivation of freedom in the context of these proceedings (with the exception of arrests) to be ordered exclusively by an independent organ that meets the condition of impartiality, namely, an organ of justice. This amendment brings Polish law into conformity with the requirements of the International Covenant on Civil and Political Rights, which stipulates that pre-trial detention must be ordered by a judge or other officer authorized by law to exercise judicial power.

37. In conformity with the recommendations laid down in the Covenant, the draft provides for extensive amendments of the provisions governing time-limits for this type of measure of constraint. These time-limits shall apply not only (as is currently the case) to preparatory proceedings but also to proceedings before the court of first instance; they remain in force until the first judgement in the current proceedings has been handed down.

38. Pre-trial detention ordered by the court as part of preparatory proceedings cannot exceed three months in duration. If, owing to the special circumstances of the case, the preparatory proceedings cannot be concluded within that period, pre-trial detention may be extended, at the request of the public prosecutor, by:

(i) The court with jurisdiction in the case - for a period not exceeding six months;

(ii) The higher court - for a longer period if necessary for concluding the preparatory proceedings, which may not exceed nine months in all.

39. The overall duration of pre-trial detention up to and including the handing down of the first judgement by the court of first instance shall not exceed one year and six months and for cases involving a crime, two years.

40. Extensions of pre-trial detention for specific periods beyond those stated above may be ordered only by the Supreme Court, at the request of the court having jurisdiction over the case, and, in the framework of preparatory proceedings, at the request of the Procurator-General if such a need arises due to the suspension of criminal proceedings, extension of psychiatric observation of the accused, extension of the time period provided for the

preparation of an expert opinion in particularly complex cases or the conduct of procedural acts outside the country; pre-trial detention may also be extended if the accused deliberately prolongs the proceedings.

Article 7

41. The rules governing the initiation and conduct of proceedings as well as decisions relating to offences laid down in the Convention, in particular the duty of public institutions to inform the public prosecutor or the police of an offence in respect of which criminal proceedings must be initiated, were described in the initial report.

42. In addition to public institutions, the draft Code of Criminal Procedure lists autonomous institutions as being subject to this duty.

43. The draft provides for some guarantee of due process by granting the person reporting an offence the right to lodge a complaint if no information on the resolution of the case is received within six weeks. Complaints are considered by the public prosecutor or the body supervising the body with which the complaint was filed. All serious ordinary-law offences are considered to be offences covered by the Convention as regards the application of procedural rules and substantive provisions relating to decisions and the enforcement procedure. The provisions in force guarantee fair treatment at all stages of the proceedings for anybody prosecuted for offences covered by the Convention.

Article 8

44. The obligations and principles referred to in article 8 are observed by all public organs that consider applications for extradition. Since the submission of the initial report Poland has acceded to the European Convention on Extradition, signed at Paris on 13 December 1957, whose provisions it strictly observes.

Article 9

45. Judicial assistance in criminal proceedings relating to the offences covered by the Convention is given pursuant to the provisions of articles 519-522 of the Code of Criminal Procedure. The rules for such assistance were described in the initial report.

46. The draft new Code of Criminal Procedure expands the scope of procedural acts in criminal cases that may be conducted in the framework of judicial assistance relating to the communication of legal information, and resolves the controversy surrounding the possibility of disclosing, in hearings before Polish courts, records and evidence collected by the courts or public prosecutor's offices of foreign countries or other competent bodies under their supervision. Such records may be read out at hearings, in accordance with specific rules, provided that they have been drawn up at the request of the Polish court or public prosecutor in a manner consistent with the principles laid down in the legislation of the Republic of Poland.

Article 10

47. Training programmes for civil or military personnel of judicial bodies and other persons who may be involved in the custody, interrogation or other procedures affecting individuals under any form of arrest, detention or deprivation of freedom include materials and information on the prohibition against torture. The standing orders and regulations that define their functions and duties also include the prohibition against torture.

Article 11

48. The initial report contains detailed information on the way in which the State supervises compliance with the rules, instructions and methods laid down for interrogations and with the provisions on the supervision and treatment of persons under any form of detention or deprivation of freedom, in order to prevent any cases of torture. The fact that the provisions of the Convention are respected by all public bodies attests to the effectiveness of this supervision. With the exception of the cases described in the first part of the report, no cases of torture or other cruel, inhuman or degrading treatment or punishment against citizens by public servants were reported in Poland in 1993 or the first quarter of 1994.

Article 12

49. Procedural rules in criminal matters provide all guarantees of prompt and impartial investigations in cases where there is reason to believe that torture has occurred in Polish territory. The initial report contained a detailed description of the basic features of this system.

50. The draft new Code of Criminal Procedure resolves these problems by extending the scope of competence of the public prosecutor to enable him to conduct preparatory proceedings directly, which represents a fundamental guarantee.

51. The draft expands the scope of cases in which an investigation is compulsory and therefore that of cases for which the public prosecutor is bound to conduct the proceedings personally.

52. As before, the police are customarily responsible for the investigation, but the public prosecutor can take it over at any time.

53. The draft also defines in greater detail the process of supervision of the preparatory proceedings by the public prosecutor, extending it to all components of that stage, except those conducted either by the public prosecutor himself or (obviously) by the court, and to the verification procedures. Supervision by the public prosecutor thus covers the steps that precede the opening of the inquiry or investigation, including the verification procedure and the process of preparation of the indictment.

54. The existing and envisaged legal remedies, the professional qualifications of public prosecutors and the rules governing the functioning of the Public Prosecutor's Office such as independence, non-political

character and subordination to the Ministry of Justice, are solid guarantees of compliance with the obligations arising from article 12 of the Convention.

Article 13

55. Under the law in force, any person who states that he has been tortured in Polish territory has the right to complain to the competent authorities with a view to having his complaint promptly and impartially examined. This right is based on the unlimited possibility of denouncing the offence to the Public Prosecutor's Office, the courts or the judge having jurisdiction over prisons.

Article 14

56. The right of a victim of torture to redress and to fair and adequate compensation is fully guaranteed by the provisions of civil and criminal law.

57. The legal provisions referred to in the initial report constitute the basis for protection of the individual's assets, such as health, freedom and dignity.

58. We should like to add that rehabilitation proceedings relating to the events that occurred during the period from 1944 to 1956, when the security agencies and NKVD officials tortured persons suspected of patriotic and anti-communist activity, are taking place before the Polish courts. The explanations, depositions and statements thus obtained by force were admitted by the courts as evidence of the guilt of accused persons who were convicted and sentenced to death or long terms of imprisonment. These judgements have been annulled as invalid and unjustly convicted persons receive compensation amounting to several million zlotys.

Article 15

59. The Code of Criminal Procedure stipulates that the person being questioned must have an opportunity to express himself freely within the limits established by the specific proceedings; only subsequently may he be asked questions designed to supplement, elucidate or verify the depositions. Article 157 of the Code of Criminal Procedure stipulates that explanations, depositions and statements made in circumstances in which it was impossible for the person concerned to express himself freely may not constitute evidence. The latter provision complies fully with the obligation arising from article 15 of the Convention.

60. The provisions of the draft new Code of Criminal Procedure go a great deal further. Under the draft, it is prohibited to ask questions that might mislead the person being questioned or to prompt a particular answer; the body conducting the questioning does not authorize such questions. It is inadmissible:

(i) To influence the statements of a person being questioned by using coercion or unlawful threats or by deliberately misleading him;

(ii) To use hypnosis or chemical or technical products that influence the mental processes of the person being questioned or are designed to control his body's unconscious reactions to the questioning.

61. Explanations, depositions and declarations made in circumstances in which it was impossible for the person concerned to express himself freely may not constitute evidence.

Article 16

62. The draft new Penal Code introduces, in the chapter dealing with offences against the administration of justice, a category of offences consisting of recourse to violence, unlawful threats or physical or mental maltreatment by a public servant against another person in order to obtain specific depositions, explanations or statements. Such an act is liable to a term of imprisonment of from six months to eight years.

63. In addition, the draft provides that a person who physically or mentally maltreats a person lawfully deprived of his liberty or a public servant who allows such an act to be committed is liable to a term of imprisonment of from three months to five years.

64. This report has been compiled in pursuance of article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in accordance with the note by the Secretary-General of the United Nations.